

## **Assembly Bill No. 1048**

### **CHAPTER 264**

An act to amend Sections 25247, 25607, 25608, 25608.2, and 25612.5 of, to repeal and add Section 25604 of, and to repeal Section 25205 of, the Corporations Code, relating to securities.

[Approved by Governor September 8, 2001. Filed  
with Secretary of State September 10, 2001.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 1048, Frommer. Securities.**

The Corporate Securities Law of 1968 provides for the licensing of agents and broker-dealers and the registration of investment advisers and investment adviser representatives by the Department of Corporations, subject to certain exceptions. Existing law requires these persons to pay certain fees and assessments to the department.

This bill would delete a provision that exempts from certification requirements a licensed broker-dealer who acts as an investment adviser. The bill would require the Commissioner of Corporations to make certain information concerning investment advisers that is in the possession of the commissioner available to the public on request. The bill would revise various fee provisions and would make other related changes.

Existing law prohibits a state or local public agency from asking or requiring an applicant for a license, certificate, or registration to reveal a record of arrest that did not result in a conviction or plea of nolo contendere.

This bill would provide that this prohibition is not applicable to the department relative to persons regulated by the department when using a national, uniform application that is required by the Securities and Exchange Commission and other entities for participation in certain national registration depositories. The bill would authorize the department to participate in those depositories.

Existing law prohibits the Commissioner of Corporations and his or her assistants, clerks, or deputies from having certain interests in entities regulated by the department. Existing law authorizes the holding or purchasing of securities by these public officials under certain conditions.

This bill would revise the provisions governing the holding or purchasing of securities by the commissioner, as specified.

Existing law requires that the Department of Corporations' administration be supported from the State Corporations Fund.

This bill would instead require that the administration and enforcement of, and the education of the public relative to, the laws and programs of the department be supported from the fund.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25205 of the Corporations Code is repealed.

SEC. 2. Section 25247 of the Corporations Code is amended to read:

25247. (a) Upon written or oral request, the commissioner shall make available to any person the information specified in Section 6254.12 of the Government Code with respect to any broker-dealer or agent licensed or regulated under this part. The commissioner shall also make available the current license status and the year of issuance of the license of a broker-dealer. Any information disclosed pursuant to this subdivision shall constitute a public record. Notwithstanding any other provisions of law, the commissioner may disclose either orally or in writing that information pursuant to this subdivision. There shall be no liability on the part of and no cause of action of any nature shall arise against the State of California, the Department of Corporations, the Commissioner of Corporations, or any officer, agent, or employee of the state or of the Department of Corporations for the release of any false or unauthorized information, unless the release of that information was done with knowledge and malice.

(b) Any broker-dealer or agent licensed or regulated under this part shall upon request deliver a written notice to any client when a new account is opened stating that information about the licensure status or disciplinary record of a broker-dealer or an agent may be obtained from the Department of Corporations, or from any other source that provides substantially similar information.

(c) The notice provided under subdivision (b) shall contain the office location or telephone number where the information may be obtained.

(d) A broker-dealer or agent shall be exempt from providing the notice required under subdivision (b) if a person who does not have a financial relationship with the broker-dealer or agent, requests only general operational information such as the nature of the broker-dealer's or agent's business, office location, hours of operation, basic services, and fees, but does not solicit advice regarding investments or other services offered.

(e) Upon written or oral request, the commissioner shall make available to any person the information filed with the Investment Adviser Registration Depository with respect to any investment adviser,



investment adviser representative, or associated person of an investment adviser licensed or regulated under this part. The commissioner shall also make available the current license status and the year of issuance of the license of an investment adviser. Any information disclosed pursuant to this subdivision shall constitute a public record. Notwithstanding any other provision of law, the commissioner may disclose that information either orally or in writing pursuant to this subdivision. There shall be no liability on the part of and no cause of action of any nature shall arise against the State of California, the Department of Corporations, the Commissioner of Corporations, or any officer, agent, or employee of the state or of the Department of Corporations for the release of any false or unauthorized information, unless the release of that information was done with knowledge and malice.

(f) Section 461 of the Business and Professions Code shall not be applicable to the Department of Corporations when using a national, uniform application adopted or approved for use by the Securities and Exchange Commission, the North American Securities Administrators Association, or the National Association of Securities Dealers Regulation, Inc. that is required for participation in the Central Registration Depository or the Investment Adviser Registration Depository.

SEC. 3. Section 25604 of the Corporations Code is repealed.

SEC. 4. Section 25604 is added to the Corporations Code, to read:

25604. The administration and enforcement of, and the education of the public relative to, the laws and programs of the Department of Corporations shall be supported from the State Corporations Fund.

SEC. 5. Section 25607 of the Corporations Code is amended to read:

25607. (a) Neither the commissioner nor any of the commissioner's assistants, clerks or deputies shall be interested as a director, officer, shareholder, member (other than a member of an organization formed for religious purposes), partner, agent, or employee of any person who, during the period of the official's or employee's association with the Department of Corporations, (1) was licensed or applied for license as a broker-dealer or investment adviser under this division, or (2) applied for or secured the qualification of the sale of securities under this division.

(b) Nothing contained in subdivision (a) of this section shall prohibit the holding or purchasing of any securities by any assistant, clerk, or deputy in accordance with such rules as the commissioner shall adopt for the purpose of protecting the public interest and avoiding conflicts of interest.



(c) Nothing contained in subdivision (a) shall prohibit the holding or purchasing of any securities by the commissioner if any of the following criteria is met:

(1) The securities held or purchased by the commissioner are exempt from the qualification requirements of Sections 25110, 25120, and 25130 by virtue of Section 25100, provided that the holding or purchasing of those securities is in accordance with rules adopted for the purpose of protecting the public interest and avoiding conflicts of interest.

(2) The securities held or purchased by the commissioner are not subject to Sections 25110, 25120, and 25130 by virtue of Section 25100.1, provided that the holding or purchasing of those securities is in accordance with rules adopted for the purpose of protecting the public interest and avoiding conflicts of interest.

(3) The holding or purchasing of any securities by the commissioner meets each of the following requirements:

(A) The securities are held or purchased through a management account or trust administered by a bank or trust company authorized to do business in this state, and the bank or trust company has sole investment discretion regarding the holding, purchase, and sale of securities.

(B) The commissioner did not, directly or indirectly, advise, counsel, command, or suggest the holding, purchase, or sale of any such security or furnish any information relating to such security to the bank or trust company.

(C) The account or trust does not at any time have more than 10 percent of its total assets invested in the securities of any one issuer or hold more than 5 percent of the outstanding shares or units of any class of securities of any one issuer.

(D) The commissioner shall report to the Attorney General not less often than quarterly all holdings, purchases, and sales of securities by him or her as authorized in paragraph (3), which reports shall be retained by the Attorney General as public documents.

SEC. 6. Section 25608 of the Corporations Code is amended to read:

25608. (a) The commissioner shall charge and collect the fees fixed in this section and Section 25608.1. All fees charged and collected under this section and Section 25608.1 shall be transmitted to the Treasurer at least weekly, accompanied by a detailed statement thereof and shall be credited to the State Corporations Fund.

(b) The fee for filing an application for a negotiating permit under subdivision (c) of Section 25102 is fifty dollars (\$50).

(c) The fee for filing a notice pursuant to paragraph (5) of subdivision (h) of Section 25102 and the fee for filing a notice pursuant to paragraph



(4) of subdivision (f) of Section 25102, in addition to the fee prescribed in those paragraphs, if applicable, shall be determined based on the value of the securities proposed to be sold in the transaction for which the notice is filed and in accordance with subdivision (g), and shall be as follows:

Value of Securities Proposed to be Sold	Filing Fee
\$25,000 or less	\$ 25
\$25,001 to \$100,000	\$ 35
\$100,001 to \$500,000	\$ 50
\$500,001 to \$1,000,000	\$150
Over \$1,000,000	\$300

(d) The fee for filing an application for designation of an issuer pursuant to subdivision (k) of Section 25100 is fifty dollars (\$50).

(e) The fee for filing an application for qualification of the sale of securities by notification under Section 25112 or by permit under paragraph (1) of subdivision (b) of Section 25113 (except applications for qualification by permit of the sale of any guarantee of any security, the fees for which applications are fixed in subdivision (k)) is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

The fee for filing a small company application for qualification of the sale of securities by permit under paragraph (2) of subdivision (b) of Section 25113 is two thousand five hundred dollars (\$2,500). In the case where the costs of processing a small company application exceed the filing fee, an additional fee shall be charged, not to exceed one thousand dollars (\$1,000), over and above the filing fee based on the costs of the salary or other compensation paid to persons processing the application plus overhead costs reasonably incurred in the performance of the work. In determining the costs, the commissioner may use the estimated average hourly cost for all persons processing applications for the fiscal year.

(f) The fee for filing an application for qualification of the sale of securities by coordination under Section 25111 or a notice of intention to sell under subdivision (t) of Section 25100 is two hundred dollars (\$200) plus one-fifth of 1 percent of the aggregate value of the securities sought to be sold in this state up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500).

(g) For the purpose of determining the fees fixed in subdivisions (e) and (f):



(1) The value of the securities shall be the price at which the company proposes to sell the securities, or the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration (if other than money) to be received in exchange therefor, or of the securities when sold, whichever is greater.

(2) Interim or voting trust certificates shall have a value equal to the aggregate value of the securities to be represented by the interim or voting trust certificates.

(3) The value of a warrant or right to purchase or subscribe to another security of the same or another issuer shall be an amount equal to the consideration to be paid for that warrant or right plus an amount equal to the consideration to be paid upon purchase of the additional securities, provided that if the latter amount is not determinable at the time of qualification, that amount shall then be the value of the additional securities as determined by the commissioner.

(4) In the case of a share dividend where the shareholders are given an option to accept either cash or additional shares of common stock, the value of the securities to be sold shall be the maximum amount of cash that would be payable in the event that all shareholders elected to accept cash.

(h) The fee for filing an application for qualification of the sale of securities by permit under Section 25121 is:

(1) Two hundred dollars (\$200) in connection with any change (including any stock split or reverse stock split or stock dividend, except a stock dividend where the shareholders are given an option to accept either cash or additional shares of common stock) in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(2) Two hundred dollars (\$200) plus one-fifth of 1 percent of the value, as alleged in the application, or the actual value, as determined by the commissioner, of the consideration to be received in exchange therefor, up to a maximum aggregate fee of two thousand five hundred dollars (\$2,500), in any exchange of securities by the issuer with its existing security holders exclusively, or in any exchange in connection with any merger or consolidation or purchase of corporate assets in consideration of the issuance of securities.

(i) The fee for filing an application for qualification of the sale of securities by notification under Section 25131 shall be one hundred dollars (\$100).

(j) The fee for an application for the removal of any condition under Section 25141 is fifty dollars (\$50).

(k) The fee for filing any application for a permit to execute or issue any guarantee of any security is fifty dollars (\$50).



(l) The fee for acting as escrowholder for securities under Section 25149 is fifty dollars (\$50). In addition, a fee of two dollars and fifty cents (\$2.50) shall be paid for the deposit with the commissioner of each new certificate or other document resulting from a transfer in escrow.

(m) The fee for filing an application for an order (1) consenting to the transfer in escrow of securities or (2) consenting to the transfer of securities subject to any condition imposed by the commissioner requiring the commissioner's consent to the transfer is twenty dollars (\$20) for each transfer.

(n) The filing fee for an amendment to an application filed after the effective date of the qualification of the sale of securities is fifty dollars (\$50) plus any additional fee that would have been required to be paid with the original application for qualification of the sale of securities under this section if the matters set forth in the amendment had been included in the original application.

(o) (1) The fee for filing an application for a broker-dealer certificate under Section 25211 is three hundred dollars (\$300).

(2) Each broker-dealer shall pay to the commissioner its pro rata share of all costs and expenses, reasonably incurred in the administration of the broker-dealer program under this division, as estimated by the commissioner for the ensuing year and any deficit actually incurred or anticipated in the administration of the program in the year in which the assessment is made. The pro rata share shall be the proportion that the broker-dealer and the number of its agents in this state bears to the aggregate number of broker-dealers and agents in this state as shown by records maintained by or on behalf of the commissioner. The pro rata share may include the costs of any examinations, audit, or investigation provided for in subdivision (r).

(3) Every broker-dealer who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a minimum assessment of seventy-five dollars (\$75) on or before the 31st of December in each year.

(4) The commissioner may assess and levy against each broker-dealer any additional amount above the minimum assessment amount of seventy-five dollars (\$75) that is reasonable and necessary to support the broker-dealer program under this division. If an additional amount is assessed, the commissioner shall notify each broker-dealer by mail of any additional amount assessed and levied against it on or before the 30th day of May in each year, and that amount shall be paid within 20 days thereafter. If payment is not made within 20 days, the commissioner shall assess and collect a penalty in addition to the assessment of 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.





(5) If a broker-dealer fails to pay any assessment on or before the 30th day of the month following the day upon which payment is due, the commissioner may by order summarily suspend or revoke the certificate issued to the broker-dealer. If, after that order is made, a request for hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when its certificate is revoked or suspended, a broker-dealer shall not conduct business pursuant to this division except as may be permitted by order of the commissioner; provided, however, that the revocation, suspension, or surrender of a certificate shall not affect the powers of the commissioner as provided under this division.

(6) In determining the amount assessed, the commissioner shall consider all appropriations from the State Corporations Fund for the support of the broker-dealer program under this division and all reimbursements applicable to the administration of the broker-dealer program under this division.

(p) The commissioner shall charge a fee of twenty-five dollars (\$25) for the filing of a notice or report required by rule adopted pursuant to subdivision (b) of Section 25210 or subdivision (b) of Section 25230.

(q) (1) Except as provided for in paragraph (2), the fee for filing an application for an investment adviser under Section 25231 is one hundred twenty-five dollars (\$125), and payment of this amount shall keep the certificate, if granted, in effect during the calendar year during which it is granted. Every investment adviser who has secured from the commissioner a certificate shall, in order to keep the certificate in effect for an additional period, pay a renewal fee of one hundred twenty-five dollars (\$125) on or before the 31st day of December.

(2) Paragraph (1) shall not apply to a broker-dealer licensed under Section 25210.

(r) (1) Except as provided for in paragraph (2), the fee for any routine or nonroutine regulatory examination, audit, or investigation is the amount of the salary or other compensation paid to the persons making the examination, audit, or investigation plus the amount of expenses including overhead reasonably incurred in the performance of the work. In determining the costs associated with an examination, audit, or investigation, the commissioner may use the estimated average hourly cost for all persons performing examinations, audits, or investigations for the fiscal year.

(2) An investment adviser licensed under Section 25230 pursuant to the Investment Adviser Registration Depository shall not be subject to paragraph (1) only in regard to the fee for a routine regulatory examination of its investment advisory services for which it is licensed under Section 25230.





(s) The fee for any hearing held by the commissioner pursuant to Section 25142 shall be the sum determined by the commissioner to cover the actual expense of noticing and holding the hearing.

(t) The commissioner may fix by rule a reasonable charge for any publications issued under his or her authority. The charges shall not apply to reports of the commissioner in the ordinary course of distribution.

(u) The fee for filing an offer under subdivision (b) of Section 25507 shall be the amount of filing fee payable under subdivision (e), (f), (h), or (i) of this section if an application had been filed to qualify the transaction in which the securities upon which the offer is to be made were sold in violation of the qualification provisions of this law.

(v) The fee for filing an application for exemption pursuant to subdivision (l) of Section 25100 is two hundred fifty dollars (\$250).

(w) The commissioner may by rule require payment of a fee for filing a notice or report required by a rule adopted pursuant to Section 25105. The fee required in connection with a transaction as defined by that rule shall not exceed the fees specified in subdivision (c) based on the value of the securities sold, but the commissioner may permit a single notice for more than one transaction.

(x) The fee for filing the first notice of transaction under subdivision (n) of Section 25102 is six hundred dollars (\$600).

(y) The fee for filing a notice of transaction under subdivision (o) of Section 25102 shall be the fee for filing an application for qualification of the sale of securities by permit under paragraph (1) of subdivision (b) of Section 25113 as set forth in subdivision (e) of this section.

(z) The fee for filing a notice of transaction under subdivision (h) of Section 25103 shall be six hundred dollars (\$600).

SEC. 7. Section 25608.2 of the Corporations Code is amended to read:

25608.2. Commencing July 1, 2000, the fee provisions of subdivision (c) of Section 25608, as they apply to the fee for filing a notice pursuant to paragraph (4) of subdivision (f) of Section 25102, and the fee provisions of subdivisions (a), (b), and (c) of Section 25608.1, shall be the maximum fees that may be levied on a notice filing under subdivision (b) of Section 25100.1, subdivision (f) of Section 25102, and subdivisions (a), (c), and (d) of Section 25102.1. The commissioner, however, may set the notice filing fee under subdivision (c) of Section 25608, as it relates to a notice filing under subdivision (f) of Section 25102, and the notice filing fees under subdivisions (a), (b), and (c) of Section 25608.1, at amounts below the maximum fees set forth in those sections. The commissioner shall set the notice filing fees under those sections for the upcoming fiscal year on or about June 1 of each year. If



the commissioner fails to set the notice filing fees for the upcoming fiscal year, then the filing fees shall be the maximum fees that may be levied under those sections for the upcoming fiscal year.

SEC. 8. Section 25612.5 of the Corporations Code is amended to read:

25612.5. (a) To encourage uniform interpretation and administration of this law and effective securities regulation and enforcement, the commissioner may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or other countries, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Securities Investor Protection Corporation, any self-regulatory organization, any national or international organization or securities officials or agencies, and any governmental law enforcement or regulatory agency.

(b) The cooperation authorized by subdivision (a) includes, but is not limited to, the following actions:

(1) Prescribing rules and forms with a view to achieving maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(2) Participating in a nationwide central depository for qualification or registration of securities under this law and for documents or records required or allowed to be maintained under this law.

(3) Participating in the Central Registration Depository, or any successor or alternative nationwide or regional depository, for the registering, certifying, or licensing of broker-dealers or agents, or both.

(4) Participating in the Investment Adviser Registration Depository, or any successor or alternative nationwide or regional depository, for the registering, certifying, or licensing of investment advisers or investment adviser representatives, or both.

(c) Notwithstanding any other provision of law, any application for qualification, amendment to the application or related securities qualification or registration document or notice under Sections 25100.1, 25101.1, 25102.1, and 25230.1 or record otherwise required to be signed that is filed in this state by means of electronic technology pursuant to a nationwide central depository for qualification or registration of securities shall be deemed to be a valid original document upon reproduction to paper form by the Department of Corporations.

(d) “Electronic technology” includes, but is not limited to, computer modem, magnetic media or optical disk, but does not include a digital signature that does not meet the requirements of California law.

